

Application No. 09/933,739
Reply to Office Action dated June 7, 2004

All claims of record have been rejected under 35 U.S.C. 103(a) as obvious over U.S. Patent Publication 2003/0220891 (Fish).

This application is a continuation-in-part of Application Serial No. 09/046,490, filed March 23, 1998, now abandoned. The instant Application, namely, Application Serial No. 09/933,739, filed August 22, 2001, reflects a re-organization of the subject matter and refinement of the original specification. However, with regard to all issues material regarding the reference to Fish, no new matter was added in the present continuation-in-part. Accordingly, Applicant has asserted, and the PTO has accepted, his claim to domestic priority under 35 U.S.C. 120 of the parent application filed March 23, 1998. In summary 35 U.S.C. 120 recites as follows:

"An application for patent for invention disclosed in the manner provided by the first paragraph of §112 of this title and an application previously filed in the United States...which is filed by an inventor or inventors named in the previously filed application shall have the same effect as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of, or termination of proceedings on, the first application..."

As such, March 23, 1998 is the effective filing date for all subject matter of the pending application material to the reference to Fish which, therefore, represents intervening art and, as such, cannot be employed as prior art under 35 U.S.C. 103(a). Applicant also notes that the instant application was published more than a year prior to the date of publication of Fish.

Herein, there is no rejection or assertion by the Examiner that the instant application does not disclose the invention in accordance with §112, ¶1. Applicant also has made a proper claim to priority which has been accepted by the PTO. Accordingly, the effective date of this invention is March 23, 1998, that is, more than two years prior to the effective date (December 22, 2000) of the reference to Fish. Fish is therefore not

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a proper reference under 35 U.S.C. 103(a), since one of ordinary skill in the art in 1998 would have had no knowledge of an invention which was to occur two years in the future.

Applicant's effective/priority date is also well prior to the effective dates of the references to Bradley, *et al* and Schurenberg *et al*.

In view of the above, all objections and rejections of record have been fully responded to and, as such, the early allowance of this Application is indicated.

Respectfully submitted,
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